IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5720 of 1988
And
SPECIAL CIVIL APPLICATION No 7830 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAKHMICHAND D JETHWANI

Versus

SECRETARY

Appearance:
MR DS VASAVADA for Petitioner
MR MB FAROOQUI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/06/2000

CAV JUDGEMENT

In these petitions under Article 226 of the Constitution, the petitioners, two in number, have challenged the action of the Gujarat Electricity Board, respondent No. 1 herein (hereinafter referred to as "the

Board" or "the GEB") in retiring the petitioners on superannuation at the age of 58 years and have prayed for a declaration that the petitioners were entitled to continue in service till they attain the age of 60 years. The petitioners have also prayed for consequential benefits like salary and other benefits.

2. L.D. Jethwani-petitioner in Special Civil Application No. 5720/88 joined the service of the Saurashtra Electricity Board at Rajkot on 10.4.1956. The petitioner was appointed as a Senior Clerk.

L.M. Pujara-petitioner in Special Civil Application No. 7830/88 joined the service of the Saurashtra Electricity Board at Rajkot on 8.10.1954. The petitioner was appointed as a Junior Clerk.

3. Thereafter upon formation of the bilingual Bombay State, the Saurashtra Electricity Board was taken over by the Bombay State Electricity Board and with effect from 1.4.1957 all the employees of the Saurashtra Electricity Board were absorbed in the services of the Bombay State Electricity Board. Upon formation of the State of Gujarat with effect from 1.5.1960, the Gujarat Electricity Board was established under the Electricity Supply Act, 1948 and all the employees of the Bombay State Electricity Board were absorbed in the services of the Gujarat Electricity Board keeping their service conditions unchanged. Thereafter, the petitioners came to be promoted to the higher posts and ultimately the petitioners were promoted to the post of Accounts Officer which post they were holding when they attained the age of 58 years. The Board passed the order for retiring L.D. Jethwani from service with effect from 31.8.1988 on the ground that he had attained the age of superannuation at 58, whereupon he filed Special Civil Application No. 5820 of 1988 for the aforesaid reliefs. Similarly, the Board passed the order for retiring L.M. Pujara from service with effect from 30.9.1988 on the ground that he had attained the age of superannuation at 58, whereupon he filed Special Civil Application No. 5820 of 1988 for the aforesaid reliefs.

4. In both these petitions, the petitioners have raised the following contentions :-

(i) The Accounts Officers are workmen within the meaning of Section 2(s) of the Industrial Disputes Act and such a contention was accepted by the Industrial Tribunal in Reference IT No. 325/81 decided on 15.7.1988 and as held in the

said award, the Accounts Officers are entitled to continue in service till the age of 60 years.

(ii) The petitioners were initially employed by the Saurashtra Electricity Board and the date of superannuation for all the workmen who were employed by the Saurashtra Electricity Board was 60 years and, therefore, the petitioners were entitled to continue in service till the age of 60 years.

5. When each of these petitions had come up for preliminary hearing, this Court passed the following order :-

"Rule. Interim relief refused as the learned counsel for the Board has made a statement that the petitioner will be entitled to all the benefits, if he succeeds in the petition as if he was in service."

6. The petitions were notified for final hearing alongwith a number of other petitions filed by Accounts Officers raising the first contention and relying on the award of the Industrial Tribunal which came to be challenged by the Gujarat Electricity Board in Special Civil Application No. 5797/88 and other cognate petitions. The Board has filed a common affidavit dated 5.9.1997 in all the petitions mainly dealing with the first contention. By judgment dated 10.5.2000, this Court has already disposed of Special Civil Application No. 5797/88 and cognate petitions setting aside the award of the Industrial Tribunal in Reference (IT) No. 325/81 and similar other awards and holding that the Accounts Officers are not workmen within the meaning of Section 2(s) of the Industrial Disputes Act and that their age of superannuation is 58 years and not 60 years. In view of the said judgment, the first contention raised by the petitioners has to be repelled.

7. However, Mr DS Vasavada, learned counsel for the petitioners has strenuously pressed the second contention and has submitted that since the age of superannuation for all the employees employed by the Saurashtra Electricity Board was 60 years, the petitioners were entitled to continue in service till the age of 60 years; therefore, the petitioners are required to be awarded backwages for the period of two years as the petitioners have even otherwise attained the age of 60 years during pendency of the petitions. In support of the said prayer, the learned counsel for the petitioners has made

the following submissions :-

(i) The Saurashtra Electricity Board had fixed the age of retirement under its resolution dated 25.6.1955 and the same was also confirmed by the respondent Board i.e. the Gujarat Electricity Board vide its resolution dated 3.2.1964 (Annexure "B") and Office Order dated 3.8.1967 (Annexure "C"). In view of the said resolutions, the petitioners were entitled to continue in service till the age of 60 years.

(ii) Strong reliance has been placed on the decisions of the Apex Court in Bholanath J. Thakor vs. State of Saurashtra, AIR 1954 SC 630 and in H.S. Gaur vs. Delhi Transport Corporation, decided on 30.11.1988 and reported in 1989(58) FLR 60.

Further reliance is placed on the judgment and decree dated 26.2.1994 rendered by the Court of the learned Civil Judge (S.D.), Gondal in Special Civil Suit No. 47/88 in the matter of K.J. Jadeja vs. Gujarat Electricity Board.

Reliance is also placed on the judgment of a Division Bench of this Court in Gujarat Electricity Board vs. B.P. Mistry, decided on 17.7.1992.

(iii) It is contended that reducing the age of superannuation from 60 years to 58 years amounted to variation in conditions of service which was done without giving the petitioners an opportunity of being heard and, therefore, violative of Section 9A of the Industrial Disputes Act. Reliance is placed on the decision of Punjab & Haryana High Court in Janta Co-operative Sugar Mills Ltd. vs. Labour Court, Jullundur, 1987(1) SLR 273.

8. On the other hand, Mr MD Pandya, learned counsel for the respondent Board has opposed the petitions and has submitted that the resolutions/circulars of the Saurashtra Electricity Board pertained to workmen and not to the Accounts Officers who have always been treated as Class-I officers on the establishment of the Gujarat Electricity Board and that, therefore, the age of retirement of Accounts Officers is not 60 years but 58 years as applicable to all other Accounts Officers who were initially employed by the Gujarat Electricity Board.

It is further submitted that the decisions relied upon on behalf of the petitioners are not applicable in the facts of the instant case.

9. As far as Regulation No. 10 dated 25.6.1955 of the Saurashtra Electricity Board is concerned, the same is not on the record of these proceedings, but the contents thereof are clearly discernible from the Circular dated 3.2.1964 issued by the Gujarat Electricity Board which is at Annexure "A" to the petitions. The relevant portion of the said Resolution reads as under :-

"The former Saurashtra Electricity Board under its Regulation No. 10 dt. 25.6.55 had decided to follow the Rules and Regulations of the State Government in service matters i.e. leave pension, TA, etc. unless in any case it was expressly provided otherwise. Under the former Saurashtra Govt. Finance Department's Resolution No. 60/48 dt. 10.11.51, 60 years of age was prescribed as the age of compulsory retirement for workman i.e. highly skilled, semi-skilled and unskilled artisans in all civil establishments with the proviso that after the age of 55 years a workman will be required to retire on one month's notice between the ages of 55 years and 60 years only in those cases where the workman's health has been impaired to such an extent as to affect his utility as a workman or where he has been negligent or inefficient in the discharge of his duties.

2. ... ...

In view of the above, no employee of the former Saurashtra Electricity Board who is governed by the former Saurashtra Govt. Resolution referred to above should be made to retire before he attains 60 years of age without the specific approval of the Head Office. Since the employee had a right to continue in service upto 60 years of age, no proposal for extension in service during the ages of 55 years and 60 should be referred to the Head Office."

The relevant portion of the Gujarat Electricity Board Office Order dated 3.8.1967 (Annexure "B" to the petitions) reads as under :-

"GEB Office Order No. EOP/IV/LAU/10071 dt. 3-8-67
Partial Amendment to GSO.86

Sub : Raising age of retirement for workmen to 58 years.

In accordance with the Board Resolution No. 671 dt. 15-7-67 following orders are issued to be effective from 1-6-67.

(a) The age of the retirement of the workmen shall be raised from 55 years to 58 years subject to following conditions :-

(i) & (ii) ... ...

(b) Those workmen who were above the age of 55 years on 1-6-67 and have been continued in service on extension shall be entitled to the same benefit mentioned hereinabove for the remaining period upto their completing age of 58 years.

(c) This clause shall apply to all the workmen of the Board except the employees of the Ex-Morvi Power House for whom the matter is at present subjudice and the employees of the former Saurashtra Elec. Board who were subsequently absorbed in the BSEB and GEB and whose retirement age is governed by Ex-Saurashtra Govt. Resolution F.D. No. 60/48 dt. 10/11/1951 as adopted by SEB's resolution No. 10 dt.25-6-55."

10. Now a close analysis of the aforesaid circulars of the GEB reveals that the age of superannuation was fixed by the former Saurashtra Government at 60 years in case of workmen i.e. highly skilled, semi-skilled and unskilled artisans in all civil establishments and that rule was followed by the former Saurashtra Electricity Board also vide its Resolution dated 25.6.1955. The GEB Circular dated 3.2.1964 at Annexure "A" merely reproduced the said rule of the former Saurashtra Electricity Board and then dealt with the question whether an employee who could be compulsorily retired at the option of the Board at the age of 55 years was required to be granted yearly extension or whether he could be continued in service till the age of 60 years without passing any such orders of extension. It was in that context that the last paragraph of the GEB Circular dated 3.2.64 provided that "in view of the above, no employee of the former Saurashtra Electricity Board who is governed by the former Saurashtra Govt. Resolution referred to above

should be made to retire before he attains 60 years of age without the specific approval of the Head Office and that since the employee had a right to continue in service upto 60 years of age, no proposal for extension in service during the ages of 55 years and 60 should be referred to the Head Office". The GEB circular dated 3.2.1964, therefore, did not expand the category of employees for whom the age of superannuation was fixed at 60 years. The beneficiaries of that rule continued to be only workmen i.e. highly skilled, semi-skilled and unskilled artisans.

Similarly, the GEB Office Order dated 3.8.1967 at Annexure "B" did not expand the category of employees for whom the age of retirement was fixed at 60 years by the former Saurashtra Electricity Board because clause (c) of the Office Order dated 3.8.1967 clearly provided that the retirement age of employees of the former Saurashtra Electricity Board whose retirement age was governed by the Ex-Saurashtra Govt. Resolution dated 10.11.1951 as adopted by the Saurashtra Electricity Board's Resolution No. 10 dated 25.6.1955 was not being varied.

11. In view of the decision dated 10.5.2000 of this Court in Special Civil Application No. 5797/88 and cognate petitions holding that the Accounts Officers are not workmen, the petitioners cannot invoke the benefit of the Saurashtra Electricity Board Resolution dated 25.6.1955 as the same was made applicable only to workmen i.e. highly skilled, semi-skilled and unskilled artisans and that Resolution cannot be applied to the Accounts Officers who are held to be outside the definition "workman" as defined by the Industrial Disputes Act, 1947.

12. Of course, Mr Vasavada for the petitioners has vehemently submitted that when the petitioners had joined as employees of the former Saurashtra Electricity Board, their age of superannuation was 60 years and that, therefore, they were entitled to continue in service till the age of 60 years even while holding the post of Accounts Officers.

It is not possible to accept the above contention. The Resolution dated 25.6.1955 of the former Saurashtra Electricity Board and the subsequent circular dated 3.2.1964 and Office Order dated 3.8.1967 of the Gujarat Electricity Board did not provide at any time that the age of retirement of the Accounts Officer was 60 years. In fact, there is nothing on record to show as to what was the age of retirement of the Accounts Officers

under the Saurashtra Electricity Board or whether, in the first place, there was any such post of Accounts Officer under the former Saurashtra Electricity Board. Even otherwise, the very fact that Resolution No.60/48 dated 10.11.1951 of the former Saurashtra Government, which was adopted by the former Saurashtra Electricity Board under its Resolution dated 25.6.1955, fixed the age of superannuation at 60 years for the employees who are workmen i.e. highly skilled, semi-skilled and unskilled artisans in all civil establishments", clearly indicates that for employees other than workmen, the age of retirement was not 60 years. Considering the fact that the Accounts Officers are employed in supervisory capacity and drawing salary in the pay scale of Rs.8500-14250 as already found in the aforesaid decision dated 10.5.2000 of this Court, it can never be said that the Accounts Officers could be considered as workmen or artisans.

13. The relevant Regulation fixing the age of superannuation of the employees of the Gujarat Electricity Board prior to 1967 read as under :-

"72. The employees of the Board are liable to compulsorily retirement on the date of their completion of 55 years of age unless specifically re-employed by the Board for the specific period. Such of the staff in whose cases retirement age is above 55 years provisionally to be continued till that date as personal to them."

Thereafter, it appears that the aforesaid Regulation was amended in 1967 by the aforesaid Office Order dated 3.8.1867 (Annexure "B") by which the date of retirement was raised from 55 years to 58 years. Hence, the Accounts Officers would be governed by the aforesaid regulation as the petitioners were holding the posts of Accounts Officer when they attained the age of 58 years in the year 1988. Subsequently, of course, the Regulation came to be amended on 10.1.1994 specifically stating as under :-

"(1) An employee serving under Class-II, III and IV categories is liable to compulsory retirement on the date of completion of 60 years of age unless specifically reemployed by the Board for a specific period.

(2) An employee serving under Class-I category is liable to compulsory retirement on the date of his completion of 58 years of age

unless specifically reemployed by the Board for a specific period."

The petitioners were obviously governed by the regulation prior to its amendment in 1994, but as already held by this Court in the aforesaid decision dated 10.5.2000, the amendment made in 1994 was merely in the nature of a clarificatory amendment as the age of superannuation of class-I officers such as Accounts Officers was always held to be 58 years.

14. In view of the above discussion, it is not possible to accept the contention urged on behalf of the petitioners that the persons who were initially employed by the former Saurashtra Electricity Board as Junior Clerks/Senior Clerks and thereafter absorbed by the Gujarat State Electricity Board and who were subsequently promoted as Accounts Officers by the Gujarat State Electricity Board were entitled to continue in service till the age of 60 years.

15. As regards the decision of the Apex Court in Bholanath J. Thakor vs. State of Saurashtra, AIR 1954 SC 630, in that case the Apex Court clearly held that the State was bound to continue the employee in service till the age of 60 years and that that obligation of the Ruler of the Ex-Saurashtra State passed on to the Saurashtra State. The appellant in that case was appointed as officiating Surnyayadhish on 2.8.1936 and was confirmed on 20.9.1936. Administration of the Wadhwan State was made over to the Saurashtra Government on 15.3.1948. In the meantime, the Ruler of the Wadhwan State promulgated on 3.2.1948 an Act which came into force with effect from 1.1.1948. Section 5 of the said Act fixed the superannuation age for the State civil servants at 60 and the appellant was, therefore, held to be entitled to continue in service till he completed his age of 60 years. It was in this context that the Apex Court gave the following reasoning :-

"Even though the tenure of the appellant's service with the Ruler of the Wadhwan State was initially during the pleasure of the Ruler, the Ruler put a fetter upon his powers to dispense with the services of the appellant when the Dhara No. 29 of St.2004 was enacted by him. This obligation of the Ruler passed to the Saurashtra State on the making over of the administration of the Wadhwan State to the Raj Pramukh on the 15th March, 1948 and the Saurashtra State also could not dispense with the services or compulsorily

retire the appellate before he attained 60 years of age."

It is, therefore, apparent that in the facts of that case, the appellant continued to hold the same post of Surnyayadhish, whereas in the instant case the initial appointment of the petitioners was as Junior Clerk/Senior Clerk and several promotions came to be conferred upon the petitioners and ultimately they were promoted as Accounts Officers in Class-I service which post they were holding while attaining the age of 58 years.

16. As regards the decision of the Apex Court in H.S. Gaur vs. Delhi Transport Corporation, decided on 30.11.1988 and reported in 1989(58) FLR 60, there also the relevant rules of the Gwalior State Civil Service Rules fixed the age of superannuation for "every employee at 60 years". Hence, the Apex Court held that the persons who originally were in the employment of the Gwalior and Northern India Transport Company (`GNIT' for short) and were employed prior to October 28, 1946 and were continued in service till May 14, 1948 (when the transport services in Delhi were taken over by the Government of India and handed over to the Delhi Transport Service) and onwards will have the right to remain in service upto 60 years unless the option to retire was exercised by the person or by the Corporation at 55 years.

In the facts of this case, this Court has found that since the age of superannuation was 60 years only for workmen and not for others and that the petitioners were not workmen while holding the posts of Accounts Officers, the decision in H.S. Gaur's case has no application.

17. As regards the decision of a Division Bench of this Court in Gujarat Electricity Board vs. B.P. Mistry (Supra), that was a case where a Junior Engineer was held by the Industrial Tribunal to be a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and, therefore, he was held to be entitled to continue in service till the age of 60 years. On the basis of the evidence led in that case and the awards in the case of Deputy Engineers, the Tribunal held that the Junior Engineer was a workman and was entitled to continue in service till the age of 60 years as he had not worked in any supervisory capacity and was a technical hand. It was in the said set of circumstances that this Court declined to interfere with the award of the Industrial Tribunal. The petitioners were holding

the post of Accounts Officer who were employed in supervisory capacity as held in this Court's judgment dated 10.5.2000. Therefore also, the decision in Gujarat Electricity Board vs. B.P. Mistry can be of no avail to the petitioners.

18. As regards the decision of the Civil Court at Gondal in Special Civil Suit No. 47/88, that was a case where an Executive Engineer was held to be entitled to continue in service till the age of 60 years. Apart from the fact that the said judgment of the Civil Court cannot bind this Court, it pertained to the post of Executive Engineer where the Civil Court held that an Executive Engineer was not workman within the meaning of Section 2(s) of the Industrial Disputes Act. That judgment is of doubtful validity as the said judgment also applied an erroneous test which was applied by the Industrial Tribunal in Reference (IT) No. 325/81, in as much as the Civil Court examined whether the Executive Engineer had managerial powers or not, without realising that once an officer employed in supervisory capacity was drawing salary of more than Rs.1600/- per month, he would not be a workman, even if he had no managerial powers.

19. As regards the decision of the Punjab & Haryana High Court in Janta Co-operative Sugar Mills Ltd. vs. Labour Court, Jullundur, 1987(1) SLR 273, the same has been relied upon by Mr Vasavada for contending that the service conditions of an employee cannot be varied without affording him an opportunity of hearing. In that case, orders refixing the pay scales were held to be null and void. Here there is no question of refixing the pay scales of the Accounts Officers. So also there is no question of changing service conditions of the employees as the superannuation age of the Accounts Officers has never been shown to be 60 years and, therefore, the said decision has no application in the facts of the present case.

Assuming that even the superannuation age of the Accounts Officers under the Saurashtra State Electricity Board was 60 years, the petitioners have not produced any material to show that the Junior Clerks/Senior Clerks under the Saurashtra Electricity Board were entitled to be promoted as Accounts Officers as a matter of right. As per the settled legal position, a chance of promotion has never been held to be a condition of service. Hence, any rule such as Regulation No. 72 made by the Gujarat Electricity Board for retiring the staff members at the age of 55 years or 58 years did not amount to any variation in the conditions of service of the non-workmen

employees who were initially employed by the former Saurashtra State Electricity Board. Therefore also, it cannot be said that there was any change in the conditions of service of the petitioners.

20. In view of the above discussion, there is no merit in any of the contentions raised on behalf of the petitioners. The petitions, therefore, fail and are hereby dismissed.

Rule is discharged in each petition. There shall be no order as to costs.

(M.S. Shah, J.)

sundar/-